



# Moveable Transactions (Scotland) Act 2023 2023 asp 3

## PART 2

### SECURITY OVER MOVEABLE PROPERTY

#### CHAPTER 1

##### PLEDGE

*Pledge, secured obligation and encumbered property*

#### 42 Pledge

- (1) A pledge is created in accordance with [this section](#).
- (2) Where a pledge is to be created over moveable property which is corporeal only, the pledge is created—
  - (a) by delivery of the property to the secured creditor, provided that the property is the provider's at the time of delivery,
  - (b) in a case where the property is not the provider's at the time of such delivery, on the property becoming the provider's subsequent to such delivery, or
  - (c) by registration in accordance with [section 48](#) or [49](#).
- (3) Where a pledge is to be created over moveable property which is—
  - (a) incorporeal only, or
  - (b) both corporeal and incorporeal,the pledge is created by registration in accordance with [section 48](#) or [49](#).
- (4) A pledge created by registration in accordance with [section 48](#) or [49](#) is to be known as a “statutory pledge”.
- (5) Nothing in [this section](#) affects any rule of law which existed prior to the commencement of this section whereby a pledge may be created over a negotiable

instrument, and nothing in [this Part](#) applies in relation to any pledge created in accordance with such a rule.

#### **43 Secured obligation and encumbered property**

- (1) The obligation secured by a pledge (“the secured obligation”)—
  - (a) may be any obligation owed, or which will or may become owed, to or by any person, and
  - (b) includes ancillary obligations owed (for example, to pay interest, damages and the reasonable expense of extra-judicial recovery of interest or damages).
- (2) The property over which a pledge is created and in respect of which the pledge subsists (“the encumbered property”) includes, except in so far as the provider and the secured creditor agree otherwise, the natural fruits of the property but not its incorporeal fruits.
- (3) At the time the pledge is created, the property which is to be the encumbered property must be transferable (whether or not its transferability is restricted in some way).